



**North Dakota House Human Services Committee
Senate Bill 2260**

**Written Testimony of Matt Sharp
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Alliance Defending Freedom is the nation's leading nonprofit legal organization that advocates for religious liberty, free speech, life, and marriage and the family. We regularly analyze proposed laws and their effect on constitutional freedoms. ADF also currently represents families in several states who have personally suffered under government policies that deprive parents of their right to raise and educate their children consistent with their beliefs and values.

Everyone should care about how children are raised. They become our nation's leaders, after all. Everyone should also be able to agree that, in nearly every case, parents are best positioned to protect their children's health and welfare.

Parents take care of us before we can take care of ourselves. They bring us into the world. They teach us to walk, to talk, to love. They prepare us to enter society and live as upstanding citizens. Of all the people who share in shaping a child's moral character and the adults they become—from teachers and coaches to spiritual mentors, extended family, and others—parents have far and away the deepest and most enduring influence.

Therefore, our laws must protect the right and duty of parents to direct the care and upbringing of their children. We must support parents by giving them the tools and support they need as they nurture and prepare children for adulthood.

Sadly, we are seeing growing instances nationwide and even in North Dakota of government officials actively seeking to replace parents as the ultimate determiners of what's best for children. Some schools are indoctrinating students into divisive ideology that subject them to unequal treatment because of their race, ethnicity, religion, and other characteristics. Government policies are promoting a destructive gender ideology and even keeping students' mental health struggles secret from parents. And medical institutions are performing harmful, experimental procedures on children who experience a sense of disconnect between their sex and their internal sense of gender.

- A Madison Metropolitan School District policy instructed district employees to assist children of any age to adopt a transgender identity at school upon the child's request, without notice to or consent from parents. The policy required teachers and staff to conceal this action from the parents and even instructed employees to deceive the parents by calling the child by his or her preferred name at school but using the child's birth name around his or her parents to keep them in the dark.

- A 12-year-old student in the Kettle Moraine School District in Wisconsin was experiencing increased anxiety and depression, and a school counseling program pushed her to say she wanted to be a boy. Her parents wanted to give her time to work out her anxiety and depression, but school officials said that no matter the parents' wishes, they would refer to the couple's daughter by whatever name and pronoun she chose. The school blatantly ignored the parents' decisions regarding their child's mental health.
- A school district policy in Albemarle County, Virginia sowed racially divisive ideology into the classroom. The policy mandated classroom activities that demeaned and attacked students based on their race, ethnicity, and religion. It also forced them to support ideas that go against their beliefs. Parents are unable to opt their children out of lessons that include hostile racial stereotyping, and as a result, these children are being taught to judge everyone and everything through the lens of race.
- Parents with children enrolled in Harrisonburg, Virginia Public Schools were being excluded from conversations about their children's mental health, and teachers were forced to deceive parents about their children's struggles. Under district policy, teachers were required to affirm the school board's view on gender identity by using any name and pronoun a student requests. This policy also forbids staff from sharing this information with parents.
- And in Jacksonville, Florida, a family was devastated when they received a call that their elementary-aged daughter had attempted to hang herself in the bathroom at school. As the family pressed for answers from school officials, they discovered that their daughter had been struggling with gender confusion. The school had been pushing this confusion, referring to the young girl by male pronouns and hiding the young girl's struggles from the parents because of hostility against the family's faith.

And now, the same policies that have caused these and many more tragic and unlawful violations of parental rights are emerging in North Dakota. In December 2019, the North Dakota School Board Association adopted a model "Transgender and Gender Nonconforming Student Procedure" policy. The model policy (attached as Appendix A):

- Requires the school to "use the name and gender by which the student identifies;"
- Prohibits school staff from "disclos[ing] any information that may reveal a student's transgender status to others, including parents or guardians...;"
- Compels the school principal to "privately ask the transgender or gender nonconforming student how they would like to be addressed in class, in correspondence to the home, and at conferences with the student's parent/guardian;" and

- Forces school staff “when communicating with parents of transgender or gender nonconforming students” to “refrain from the use of gender pronouns and refer to the student by name when practicable.”

This NDSBA policy would result in North Dakota parents being excluded and even lied to about their child’s mental and emotional health.

At least one school district—the McClusky School District #19—has adopted the NDSBA Transgender and Gender Nonconforming Student Procedure policy in full. (See Appendix B). Others may have done so secretly, as is often the case with policies like these.

SB 2260 will help stop policies that undermine parental rights and harm children from spreading throughout North Dakota. Parents’ choices about how best to raise their children should not be ignored or overruled by school officials. Instead, it is in kids’ best interests for parents to be involved any time a child faces serious issues at school, whether academic, social, or mental or emotional health. Parents love and care for their children far more than any government bureaucrat will ever do. And parents must be immediately informed when such issues arise so that they can help their child navigate and overcome any challenges.

SB 2260 will protect North Dakota families by doing three things:

First, the bill recognizes that parental rights are fundamental rights—co-equal to other fundamental rights like free speech or the free exercise of religion. As a result, the government may only interfere with parents’ decisions when it has a compelling reason to do so, such as protecting a child from physical abuse.

Second, the bill expounds on the scope of parental rights, including decisions concerning a child’s education, moral and religious upbringing, and health care. It ensures that parents are empowered to make decisions regarding their child’s physical and mental health. It requires schools to be transparent about what they are teaching children and to respect parents’ wishes when it comes to divisive and potentially harmful issues including gender ideology that conflicts with the families’ beliefs and values.

Finally, the bill provides a legal remedy for families whose rights are violated. Otherwise, families may be left with no recourse when the government tramples their rights.

Fourteen other states have enacted laws like SB 2260 that help to protect parental rights against inappropriate government intrusion. By passing SB 2260, North Dakota would join these states in restoring parental rights to a “top-tier” right and would take a strong, principled stand with parents throughout the state.

Parents love and know their children best. While the state has an interest in promoting the education of children and protecting their health and safety, it must pursue those goals in a manner that respects the rights of parents. SB 2260 ensures that state and local officials respect the unique role and authority of parents to raise and train their children.

Appendix A:

Model North Dakota School Board Association Policy FDI-AR

Adopted Dec. 9, 2019

TRANSGENDER AND GENDER NONCONFORMING STUDENT PROCEDURE

This administrative rule serves as a guide on how to best support the needs of the district's transgender and gender nonconforming students and their families. This regulation does not anticipate every scenario and situation that may occur with respect to transgender and gender nonconforming students, and not all transgender and gender nonconforming students' needs may be the same. Therefore, administrators are encouraged to discuss these issues with each transgender and gender nonconforming student and their families on a case-by-case basis to determine how best to support the student within the parameters of this administrative regulation.

Student Transition Meeting

The principal or designee shall request a meeting with the transgender or gender nonconforming student and their parent/guardian upon the student's enrollment in the District or in response to a currently enrolled student's change of gender expression or identity.

The goals of the meeting are to:

1. Develop an understanding of the student's individual needs with respect to their gender expression or gender identity, including any accommodations that the student is requesting or that the District may provide according to district policy and procedure, and/or under state and federal law; and
2. Develop a shared understanding of the student's day-to-day routine within the school so as to foster a supportive relationship and help alleviate any apprehensions the student may have with regard to their attendance at school.

The school may not require the student to attend a meeting as condition of providing them with the protection to which they are entitled under district policy and procedure, and/or state and federal laws regarding gender expression or gender identity.

Official Records

The District is required to maintain a permanent student record which includes the student's legal name and the student's gender. The District must change a student's official records to reflect a change in legal name upon receipt of documentation that the student's legal name has been changed pursuant to a court order or through amendment of state or federally-issued identification.

To the extent that the District is not legally required to use a student's legal name and biological sex on school records or documents, i.e., rosters, student ID cards, or awards, the District must use the name and gender by which the student identifies.

In situations where school employees are required by law to use or report a student's legal name or gender, such as for standardized testing, school staff shall adopt practices to avoid the inadvertent disclosure of the student's transgender or gender nonconforming status.

Privacy/Confidentiality

The District shall ensure that all personally identifiable and medical information relating to a transgender and gender nonconforming student shall be kept confidential in accordance with applicable state, local, and federal privacy laws. School staff shall not disclose any information that may reveal a student's transgender status to others, including parents or guardians and other school staff, unless legally required to do so or the student has authorized such disclosure. In the rare instance that a school is legally required to disclose a student's transgender status, the school should provide the student an opportunity to make the disclosure themselves, where practicable. This would include providing the student with any support services the student may need to make the disclosure in a safe and supportive environment.

Communication and Use of Names and Pronouns

The principal or designee shall privately ask the transgender or gender nonconforming student how they would like to be addressed in class, in correspondence to the home, and at conferences with the student's parent/guardian. That information shall be included in the electronic student record system along with the student's legal name in order to inform teachers and staff of the name and pronoun by which to address the student. When appropriate or necessary, this information shall be communicated directly with staff to facilitate the use of proper names and pronouns. A student is not required to change their official records or obtain a court-ordered name and/or gender change as a prerequisite to being addressed by the name and pronoun that corresponds to their gender identity.

When communicating with transgender or gender nonconforming students regarding particular issues such as conduct, discipline, grades, attendance or health, school employees shall focus on the conduct or particular issues rather than making assumptions regarding the student's actual or perceived gender identity. When communicating with parents of transgender or gender nonconforming students, school employees shall refrain from the use of gender pronouns and refer to the student by name whenever practicable. The District shall not condone the intentional and persistent refusal to respect a student's gender identity, or inappropriate release of information regarding a student's transgender status.

Dress Code

The District shall allow students to dress in a manner that is consistent with their gender identity and/or gender expression within the constraints of the dress code adopted at the student's school of attendance and within the constraints of the district guidelines for dress as they relate to health and safety issues (e.g., prohibitions on wearing gang-related apparel). The school dress code must be gender-neutral and shall not restrict a student's clothing choices on the basis of gender.

Restroom Accessibility

Students shall have access to a restroom that corresponds to their gender identity. A student shall not be required to use a restroom that is incongruent with the student's

gender identity. Where available, a single use bathroom may be used by any student who desires increased privacy, regardless of the reasons. The use of a single use bathroom shall be a matter of choice for a student, and no student shall be compelled to use such a bathroom. Use of restrooms by transgender or gender nonconforming students shall be determined on a case-by-case basis depending on specific circumstances.

Locker Room Accessibility

Use of locker rooms by transgender or gender nonconforming students shall be assessed on a case-by-case basis, with the goal of maximizing transgender or gender nonconforming student social integration, providing an equal opportunity to participate in physical education classes and athletic opportunities, and ensuring the student's safety. In most cases, the district shall provide the student access to the locker room that corresponds to the gender identity they assert at school. Reasonable alternatives to locker room conditions include, but are not limited to:

1. Use of a private area (e.g., nearby restroom stall with a door, an area separated by a curtain, an office in the locker room, or a nearby restroom); or
2. A separate changing schedule (i.e., utilizing the locker room before or after the other students).

Any alternative to locker room conditions shall be provided in a manner that allows the student to keep his or her transgender or gender nonconforming status private. No student, however, shall be required to use a locker room that conflicts with his or her gender identity.

Physical Education, Athletics and Activities

Students shall be permitted to participate in gender-separated physical education, intramural athletics, and non-high school interscholastic athletics and activities in accordance with the student's gender identity. Participation in high school interscholastic athletics and sports is governed by the [North Dakota High School Activities Association](#), which has its own policy with respect to transgender student participation. Activities that may involve the need for accommodations to address student privacy concerns, such as overnight trips, shall be addressed on a case-by-case basis using the guiding principles of safety and honoring the student's gender identity and expression.

Appendix B:

McClusky School District #19 Administrative Regulation FDI-AR

TRANSGENDER AND GENDER NONCONFORMING STUDENT PROCEDURE

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End of McClusky School District #19 Administrative Regulation FDI-AR

[06/19]